

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

Case No.: 18-31635

VR KING CONSTRUCTION, LLC,

Chapter 7

Debtor.

SECOND OBJECTION TO AMENDED CLAIM
#2 AND BY Y2 YOGA COTSWOLD, LLC

TO THE HONORABLE COURT:

COMES NOW Debtor through the undersigned attorney and respectfully requests and states the following:

1. The Debtor filed a Chapter 11 petition on October 31, 2018.
2. The Debtor's case was converted to a Chapter 7 on April 11, 2019.
3. That Creditor, Y2 Yoga Cotswold, LLC (hereinafter, "Y2") filed proof of claim #2 on February 19, 2019, in the amount of \$574,963.90. Creditor, Y2 did not alleged attorney fees in its original proof, and its amended proof of claim, nor did it provide supporting documents or proof of the same as required by Bankruptcy Rule 3001 for its original and amended proof of claim #2.
4. Creditor, Y2, filed an amended proof of claim # 2 on February 20, 2019, in the amount of \$574,963.90. Y2 did not alleged attorney fees in its proof its proof of claim #2.
5. The Debtor filed an objection to Y2's proof of claim filed on February 20, 2019 on March 15, 2019.
6. The Court overruled the Debtor's objection to Y2's proof of claim filed on February 20, 2020 without a hearing on June 19, 2020.

7. At the hearing held on June 19, 2020 the Court allowed Y2 to file an amended proof of claim on or before June 19, 2020.

8. Creditor, Y2, filed its second (2nd) proof of claim # 2 on July 6, 2020, in the amount of \$981,139.49. Y2 Yoga did not request attorney fees for its bankruptcy counsel in its amended claim nor did it file the required documentation evidencing a claim for attorney fees for its bankruptcy counsel pursuant to Rule 3001.

9. Creditor, Y2, filed its third (3rd) proof of claim #3 on July 16, 2020, more than ten (10) days after the Court ordered July 6, 2020 deadline in the amount of \$1,218,901.99, requesting attorney fees for its bankruptcy counsel.

10. Creditor Y2 Yoga Cotswold, LLC, alleged that its second amended proof of claim #2 filed on July 6, 2020, in the amount of \$918,139.49 is secured.

11. Creditor Y2 Yoga Cotswold, LLC, alleged that its third amended proof of claim #2 filed on July 16, 2020, in the amount of \$1,218,901.99 is secured.

12. The Debtor objects to the claim of Y2 Yoga's third proof of claim filed on July 16, 2020, in its entirety as filed.

13. The Debtor objects to the amount claimed as secured by Creditor that relates to attorney fees because a claim for attorney's fees as a secured claim under 11 U.S.C. Section 506(b) can be awarded only if (1) the fees are allowed by the agreement under which the claim arose or (2) if the fees are allowed by State statute under which the claim arose. The Debtor asserts that the liens in this case arose from the North Carolina attachment statutes and said statute does not authorize payment of attorney fees.

14. Additionally, Debtor asserts that North Carolina General Statute § 6-21.6 relied upon by Y2 yoga does not allow attorney fees in excess of the Judgment awarded in the state court litigation.

15. That the Debtor asserts that Y2's claim for pre-petition attorney fees, specifically, the claims for attorney fees for Horack Talley and Attorney Guidry are pre-petition attorney fees that are not allowable pursuant to the Fourth Circuit's Summitbridge National Invs. v. Faison.

16. The Debtor asserts that both Horack Talley and Attorney Guidry's attorney fees are pre-petition attorney fees.

17. The Bankruptcy Code allows a creditor to file a claim against a Debtor in bankruptcy pursuant to §501 of the Bankruptcy Code. For a claim to be allowed under section 502 of the Bankruptcy Code, the filing has to be in accordance with Bankruptcy Rule 3001 & 3002. *See* 11 U.S.C.S. §502; U.S.C.S. Bankruptcy Rules 3001 & 3002.

18. The objection to disallow a claim must be based on the unenforceability of the claim against the Debtor or property of the Debtor under any agreement or applicable law. Bankruptcy Code, 11 U.S.C.A. §502, 502(b)(1); 28 U.S.C.A. §1334. In re Toledo, 17 BR 914 (1982).

19. For the reasons stated above, Debtor requests that the third amended proof of claim #2 filed by Y2 on July 16, 2020, by Creditor Y2 Yoga Cotswold, LLC in the amount of \$1,218.901.99 be disallowed as filed.

WHEREFORE the Debtor respectfully requests that this Honorable Court grant its Objection along with any other remedy it may deem appropriate.

This 20th day of July 2020.

ROBERT LEWIS, JR.
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N.C. State Bar no: 35806

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**NOTICE OF OPPORTUNITY FOR HEARING ON DEBTOR'S OBJECTION
TO AMENDED CLAIM # 2 FILED BY Y2 YOGA COTSWOLD, LLC**

NOTICE IS HEREBY GIVEN of the **OBJECTION TO AMENDED CLAIM # 2 FILED BY
Y2 YOGA COTSWOLD, LLC**

("Objection") filed simultaneously herewith in the above captioned case; and,

FURTHER NOTICE IS HEREBY GIVEN that this Objection may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of the Court within 30 days from the date of this notice to the Clerk of Court at:

Clerk, United States Bankruptcy Court
401 W. Trade Street
Charlotte, NC 28202

If you mail your response to the Clerk for filing, you must mail it early enough so that the court will receive on or before the date stated below. You must also mail a copy to:

Robert Lewis, Jr
The Lewis Law Firm, PA
PO BOX 1446
Raleigh, NC 27602

FURTHER NOTICE IS HEREBY GIVEN, that a hearing will be conducted on the Objection at the U.S. Court House 401 West Trade Street, 1st Floor on **August 12, at 9:30 a.m.**

DATE OF NOTICE: July 20, 2020

s/Robert Lewis, Jr.
ROBERT LEWIS, JR.
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CERTIFICATE OF SERVICE

I hereby certify that I this day have served a copy of the Debtor's **Objecting To Amended Claim #2, Filed by Y2 YOGA COTSWOLD, LLC** and Notice of the Same, to all the other parties of interest or their attorney of record requesting notice and to the following:

EXECUTED ON: July 20, 2020

U. S. Bankruptcy Administrator
alexandria_p_kenny@ncwba.uscourts.gov

A. Burton Shuford
Chapter 7 Trustee
Email: bshufurd@abshuford.com

James H. Henderson
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VR King Construction, LLC
626 Char-Meck Lane
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s/Robert Lewis, Jr.
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